

Senate Bill No. 760

CHAPTER 597

An act to amend and repeal Section 6368.8 of, and to add Section 6368.9 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 2003. Filed
with Secretary of State September 29, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 760, Scott. Sales and use taxes: exemptions: public passenger vehicles.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax. One of these exemptions, effective until January 1, 2004, is an exemption for specified sales and leasebacks of qualified equipment, as defined, used in the provision of public transportation services, as well as for purchases of leased or subleased qualified equipment purchased by a qualified person, as defined, at the end of the term of the lease or sublease.

This bill would extend the operation of this provision until January 1, 2009.

Existing law requires that the Legislative Analyst conduct a study on the impact of this exemption, and report its findings to the Legislature by January 1, 2003.

This bill would instead require the Legislative Analyst to report the results of its study to the Legislature by January 1, 2008, and would add an additional element to the study.

The bill would also require the qualified person to submit certain documents to specified state entities no later than 5 days after the closing of any lease-leaseback transaction, and would require the Franchise Tax Board to assess the information provided in those documents and report on the revenue loss to the state.

Upon the repeal of this exemption, this bill would exempt option purchases of leased or subleased qualified equipment by a qualified person, if the purchaser and equipment were otherwise eligible for the exemption at the time the lease or sublease was entered into.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales

and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but it would become operative on January 1, 2004.

The people of the State of California do enact as follows:

SECTION 1. Section 6368.8 of the Revenue and Taxation Code is amended to read:

6368.8. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, qualified equipment, provided all of the following conditions are satisfied:

- (1) The qualified equipment is sold or leased by a qualified person.
- (2) The qualified person has paid sales tax reimbursement or use tax with respect to the qualified person's purchase or acquisition of the qualified equipment.
- (3) The qualified equipment is sold or leased by the qualified person and the qualified equipment is leased back to the qualified person.

(b) For purposes of this section:

(1) "Qualified person" means an entity that qualifies as a claimant, as defined in Section 99203 of the Public Utilities Code, eligible to receive allocations under the Transportation Development Act (commencing with Section 99200 of the Public Utilities Code).

(2) "Qualified equipment" means a vehicle or vessel and any related equipment used in the provision of public transportation services, including, but not limited to, bus and van fleets, ferry boats, rail passenger cars, locomotives, other rail vehicles, train control equipment, fare collection equipment, communication systems, global positioning systems, and other systems and accessories related to the operation of a vehicle or vessel used in the provision of public transportation services.

(c) The exemption provided by this section also applies to subsequent purchases of qualified equipment by a qualified person at the end of the term of a lease or sublease of qualified equipment, provided the provisions of paragraphs (1), (2), and (3) of subdivision (a) are met.



(d) The Legislative Analyst, in consultation with the State Board of Equalization and the Franchise Tax Board, shall conduct a study on the impact of the exemption authorized under this section and shall report to the Legislature, by January 1, 2008, on the following:

- (1) The number of persons utilizing the exemption.
- (2) The fiscal impact of the exemption, including the total exemption amount and any depreciation claimed for qualified equipment.
- (3) The impact, if any, of federal law, including, but not limited to, Revenue Ruling 99-14, on the utilization of the exemption.
- (4) The impact of the exemption on California's public transit sector.
- (5) A recommendation as to whether the exemption should be continued, and if the continuation of exemption is recommended, recommendations on modifications to the existing exemption provisions that should be implemented.
- (6) The impact, if any, on the California personal income and corporation taxes, based on the information provided in subdivisions (e) and (f).

(e) No later than five business days after the closing of any transaction executed pursuant to paragraph (3) of subdivision (a), the qualified person shall provide to the Franchise Tax Board, the Legislative Analyst, the Department of Transportation, the Senate Committee on Revenue and Taxation, and the Assembly Committee on Revenue and Taxation, the following documents:

- (1) Copies of the consent letter obtained by the qualified person from the Federal Transit Administration (FTA) within the United States Department of Transportation, authorizing the transaction under FTA Circular 7020.1: Cross-Border Leasing Guidelines.
- (2) Copies of the appropriate Internal Revenue Service Form 8264: Application for Registration of a Tax Shelter, that is related to the transaction.
- (3) A report describing how the qualified person is using the benefits derived from the lease-leaseback transaction, and, where available, the division between the qualified persons and the purchasers, including equity partners, of the lease or sublease of the qualified equipment.
- (f) The Franchise Tax Board, every other year, shall review the information it is provided by qualified persons pursuant to subdivision (e), and, based on the apportionment of income between the qualified persons and the purchasers of the lease or sublease of the qualified equipment, including the equity partners, assess the revenue loss to the state, if there is any. The board shall report its assessment to the Legislative Analyst, the Senate Committee on Revenue and Taxation, and the Assembly Committee on Revenue and Taxation.



(g) This section shall remain in effect until January 1, 2009, and as of that date is repealed.

SEC. 2. Section 6368.9 is added to the Revenue and Taxation Code, to read:

6368.9. (a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, qualified equipment purchased by a qualified person at the end of the term of a lease or sublease of qualified equipment pursuant to any exercise of a purchase option under the lease or sublease, provided the following conditions are satisfied:

(1) As of the date the lease or sublease was entered into, the qualified person and qualified equipment were otherwise eligible for exemption under Section 6368.8, as that section read on that same date.

(2) The lease or sublease was entered into before the repeal date of Section 6368.8.

(b) For purposes of this section, “qualified equipment” and “qualified person” have the same meanings as defined in Section 6368.8, as that section read on the date the lease or sublease was entered into.

(c) This section shall only become operative if Section 6368.8 is repealed and, in that event, shall become operative on the date that section is repealed.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on January 1, 2004.

